

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

IN THE MATTER OF APPLICATION 55385 FILED)
TO CHANGE THE POINT OF DIVERSION, PLACE)
OF USE AND MANNER OF USE OF A PORTION)
OF THE UNDERGROUND WATER PREVIOUSLY)
APPROPRIATED WITHIN THE PAHRUMP VALLEY)
HYDROGRAPHIC BASIN (162), CLARK COUNTY,)
NEVADA.)

RULING

4990

GENERAL

I.

Application 55385 was filed on October 19, 1990, by Lou Etta McKoy to change the point of diversion, place of use and manner of use of .04687 cubic feet per second (cfs), not to exceed 10 acre-feet annually (afa), a portion of the underground water previously appropriated under Permit 17798, Certificate 5930. The proposed manner of use is to provide water service for commercial use for a convenience store, mobile home sales office, service station and fire works store, all of which are located within the NW¼ SE¼ and NE¼ SW¼ of Section 3, T.21S., R.54E., M.D.B.& M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 3.¹

II.

Certificate 5930 was issued on October 19, 1965, under Permit 17798 for 3.0 cfs, but not to exceed 640 afa, for the irrigation of 128 acres of land. The water rights represented by Permit 17798, Certificate 5930, have been through a series of divisions, title assignments, change applications, transfers, partial relinquishment, reversion to the ground water basin, and forfeiture.²

FINDINGS OF FACT

I.

The State Engineer finds from records in his office that the applicant, Lou Etta McKoy, does not own that portion of Permit 17798, Certificate 5930, requested for change under Application 55385.²

¹ File No. 55385, official records in the office of the State Engineer.

² File No. 17798, official records in the office of the State Engineer.

II.

Records in the State Engineer's office show that permits have been granted for four applications to change a total of 1.503 cfs, 320.605 afa, under Permit 17798, Certificate 5930.^{2,3,4,5,6} Records also show that a total of 1.403 cfs, 299.395 afa, has been relinquished or reverted to the ground water basin to support the development of subdivisions.² Two forfeiture actions totaling 0.094 cfs, 20.0 afa, have been taken by the State Engineer in decision letters dated December 14, 1999. The State Engineer finds that permits, relinquishments or reversions, and forfeitures have accounted for a total diversion rate and annual duty of 3.0 cfs, 640 afa, leaving no valid water right under Permit 17798, Certificate 5930, to support change Application 55385.

III.

The State Engineer finds that the forfeiture of the two portions totaling 20.0 afa under Certificate 5930 is final as no proceedings on a petition for judicial review as allowed under NRS § 533.450 have been requested.²

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.⁷

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:⁸

- A. the proposed use conflicts with existing rights; or
- B. the proposed use threatens to prove detrimental to the public interest.

³ File No. 47141, official records in the office of the State Engineer.

⁴ File No. 49971, official records in the office of the State Engineer.

⁵ File No. 49972, official records in the office of the State Engineer.

⁶ File No. 49973, official records in the office of the State Engineer.

⁷ NRS chapters 533 and 534.

⁸ NRS § 533.370(3).

III.

The State Engineer concludes that Permit 17798, Certificate 5930 is abrogated and there is no water right now existing under the certificate which would support the changes proposed by Application 55385.

IV.

The State Engineer concludes that to grant a permit to change Application 55385 when there is no water right existing under Permit 17798, Certificate 5930, would conflict with existing rights and would threaten to prove detrimental to the public interest.

RULING

Application 55385 is hereby denied on the grounds that to grant a permit to change another permit that is totally abrogated and has no existing water right would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.

State Engineer

HR/CAB/cl

Dated this 22nd day of
December, 2000.